



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-600-10 et seq.
Regulation Title:	Food Stamp Program - Administrative Disqualification Hearings
Action Title:	Mail Notification and Administrative Review
Date:	August 16, 2000

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

This action establishes procedures for conducting administrative hearings to determine if individuals have committed intentional violations of the rules and regulations of the Food Stamp Program. Amendments in the regulation reflect changes in procedures noted in the Code of Virginia and in federal regulations.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

No changes have been made since the proposed stage.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The State Board of Social Services approved this final action on August 16, 2000.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Regulations at Title 7 of the Code of Federal Regulations §273.16 require states to determine whether intentional program violations have occurred in the Food Stamp Program either through referral to a court of appropriate jurisdiction or through an administrative disqualification hearing. §63.1-124 of the Code of Virginia allows the State to determine whether intentional program violations have occurred either through an appropriate court referral or through an administrative disqualification hearing. §63.1-116, §63.1-117, and §63.1-119 of the Code of Virginia establish the role of the Commissioner of Social Services or the designee in the appeal process.

The regulation does not exceed federal minimal requirements.

The web site address for federal regulations is www.access.gpo.gov/nara/cfr.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The administrative disqualification hearing process establishes the procedures for local social services agencies and impartial hearing officers must follow to determine whether individuals have committed fraud against the Food Stamp Program in an attempt to apply or receive benefits to they are not entitled. The administrative hearing process is intended to protect the Food Stamp Program against abuse. The process also seeks to protect recipient households against frivolous or malicious actions by the local agencies by requiring the agencies to follow set procedures of introducing evidence or requiring hearing officers to be convinced of the intentional nature of clients' actions.

Changes are needed in the original regulation to align the regulation with revised federal regulation and the Code of Virginia. Federal regulations permit the administrative hearing to be conducted when the hearing notice is returned as undeliverable. The Virginia Code now recognizes electronic benefit delivery in addition to issuances through the use of an Authorization to Participate card and food stamp coupons. The Virginia Code no longer identifies the State Board of Social Services as the final hearing authority. The final regulation encompasses the amendments to the Code of Virginia and federal regulations. The regulation permits an administrative review to be conducted when the hearing notice is undeliverable and allows for another hearing if there is good cause for the nondelivery. The regulation also identifies program violations using access devices for electronic delivery of benefits as a potential reason for the hearing.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

Two substantive changes to the regulation are reflected from the original regulation. These changes allow for the notice of a hearing to be sent by regular mail and that the hearing may be held even if notice is returned as undeliverable. Provisions have been added that the hearing officer is required to verify the address, to the extent possible, and that an incorrect address will be considered good cause to generate a new hearing (22 VAC 40-600-70 and 22 VAC 40-600-140). The other change scattered throughout the regulation is the allowance of an administrative review rather than a subsequent appeal to the State Board of Social Services after a decision has been rendered.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The substantive changes contained in the proposed regulations are actions that reflect changes in the Virginia Code or federal regulations for the Food Stamp Program. The changes do not favor recipient households more than local agencies nor would it seem that either faction is greatly harmed by the changes proposed in conjunction with the overall regulation.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No comments were received during the public comment period.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

22 VAC 40-600-10: A definition is added for an "access device." The access device recognizes that food stamp benefits may be delivered through other means than the traditional food stamp coupon or program authorization card.

The definition of an intentional program violation is amended to include issuance of food stamps using an access device.

22 VAC 40-600-70: The regulation previously required the delivery of the hearing notice to be made using certified mail. Federal regulations now permit the hearing notice to be made using regular first class mail. A provision is added that the hearing may be conducted if the notice is undeliverable provided the last known address was correctly posted. A provision is added that requires a revised notice if the original notice is incorrectly addressed.

22 VAC 40-600-90: With the adoption of §70, the prohibition against conducting the hearing, when there is no evidence the notice was received, is eliminated.

22VAC 40-600-170: The provision that allowed a review of the decision by the State Board of Social Services is eliminated. The household or the local agency may seek an administrative review but the decision of the hearing officer is final. The hearing officer's decision may be overturned through legal action by the household.

22 VAC 40-600-210: Review of the hearing officer's decision by the State Board is eliminated. Households may seek an administrative review of the decision or may challenge the decision through the court.

Except for the provision that requires hearing officers to verify the address against the case file and sending a revised notice if the notice was incorrectly posted, all other provisions were included in the review by the attorney general.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulation does not strengthen or erode the relationship between parents and their children with regard to education, supervision. The regulation does not encourage or discourage economic self-sufficiency, self-pride or alter the responsibility of oneself or family. The regulation does require an acceptance of responsibility for one's actions to receive only the food stamp benefits to which the household is entitled rather than to attempt or to receive benefits or additional benefits by intentionally providing misleading or incorrect information on which the eligibility is based.